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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIK D. MENDOZA-CONTRERAS,

Defendant.

CASE NO. 1:22-CR-00074-JLT-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: March 15, 2023
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

This case is set for status on March 15, 2023. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.

1 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 2 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 3 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 4 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 5 or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 7 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 8 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 9 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 10 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 11 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 12 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 13 and the defendant in a speedy trial.” *Id.*

14 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 15 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 16 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 17 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 18 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 19 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*
 20 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 21 following the September 11, 2001 terrorist attacks and the resultant public emergency).

22 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt
 23 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-
 24 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act
 25 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL
 26 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is
 27 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked
 28 speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a

population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through their counsel, hereby stipulate as follows:

1. By previous order, this matter was set for status on March 15, 2023.
2. By this stipulation, defendants now move to continue the status conference until August 16, 2023, and to exclude time between March 15, 2023, and August 16, 2023, under 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv).
3. The parties agree and stipulate, and request that the Court find the following:
 - a) The government has represented that the discovery associated with this case includes investigative reports and related documents in electronic form, videos, photographs, and digital evidence. The government provided initial discovery and supplemental discovery. On September 26, 2022, the government produced a second batch of supplemental discovery.
 - b) Counsel for defendant desires additional time to review discovery, consult with his client, discuss potential resolutions with his client, and otherwise prepare for trial.
 - c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.
 - d) The government does not object to the continuance.
 - e) Based on the above-stated findings, the ends of justice served by continuing the

case as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of March 15, 2023 to August 16, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(i) and (iv) because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendants in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: March 6, 2023

PHILLIP A. TALBERT
United States Attorney

/s/ Antonio J. Pataca
ANTONIO J. PATACA
Assistant United States Attorney

Dated: March 6, 2023

/s/ Nicholas Reyes
NICHOLAS REYES
Counsel for Defendant
Erik D. Mendoza-Contreras

ORDER

IT IS SO ORDERED.

DATED: 3/7/2023

Sheila K. Oberto

THE HONORABLE SHEILA K. OBERTO
UNITED STATES DISTRICT JUDGE